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April 22, 1996

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

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APR 22 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Written Ex Parte Presentation -
PP Docket No. 93-253
WT Docket No. 96-59

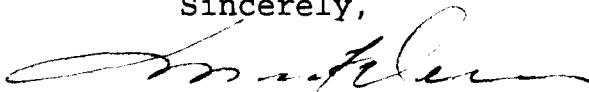
Dear Mr. Caton:

Cook Inlet Region, Inc. ("CIRI") hereby gives notice of a written ex parte presentation in the above-referenced proceedings. The presentation was made in the form of the attached letter.

CIRI delivered the attached letter to individuals in the Office of the General Counsel, the Office of Plans and Policy, the Wireless Telecommunications Bureau, and the Auctions Division. CIRI also delivered the attached letter to individuals in the Offices of Chairman Hundt and Commissioners Quello, Ness, and Chong.

Two copies of the letter are submitted herewith pursuant to Section 1.1206(a)(1) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(1).

Sincerely,



Mark F. Dever

Enclosures

cc: William E. Kennard
Peter A. Tenhula
Robert M. Pepper
(continued)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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COOK INLET COMMUNICATIONS

April 22, 1996

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APR 22 1996

William E. Kennard
General Counsel
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Dear Mr. Kennard:

Pursuant to your request, the following is a suggested plan for dealing with defaults of PCS "C" Block debt:

- Cook Inlet's Experience. Cook Inlet Communications, Inc. (CICI) has substantial experience in restructuring complex public and private debt involving an array of broadcast licenses and creditors. Our views herein are based on this "hands-on" experience with the real world of debt restructure.
- The Commission Must Establish More Flexibility And More Alternatives For Itself Than Merely The Re-auction Mechanism.

The simple truth is that the re-auction mechanism is unlikely to be quick or effective. The reason is delay. First, the defaulting "C" block debtor -- when faced with the Commission's current "hard-line" position¹ -- undoubtedly will seek relief in bankruptcy. The Commission will then be subject to the bankruptcy automatic stay order. In our judgment, and that of our bankruptcy counsel, the debtor will thereafter have a strong chance to tie up and substantially delay lifting of the stay and the Commission's remedies as a secured creditor. This effort will be joined by the key creditors (e.g. the equipment vendors who provided financing) who will oppose the government's attempt to pull the key asset (the license) from the bankruptcy estate.

Second, it is unlikely that the creditors' committee and/or the bankruptcy court will allow any recovery of the auction price differential or penalties by the government.

¹Public Notice: Wireless Telecommunications Bureau Will Strictly Enforce Default Payment Rules, DA 96-481 (Rel. April 4, 1996) ("FCC Position").

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Even the up-front cash payment paid to the Commission will be subject to the bankruptcy court's "reach-back" as a preference and likely will not be retained by the Commission.

Accordingly, the result of a "full-speed ahead re-auction" policy may well be frustration of the Commission's goals in six key respects:

- Delay in re-auction.
- Lost revenues through lower prices in re-auction due to delays.
- Frustration of the goal of wide and diverse dissemination of licenses.
- Frustration in providing competitive PCS services to the public.
- Failure to collect any auction-price differential, much less any penalty, much less retaining the initial bid deposit.
- Perhaps most important, the overall stigma of a "failed" auction process -- defaults, bankruptcy, delays, litigation, poor ultimate prices.

Accordingly, we urge the Commission to be pragmatic and quickly develop an optional "restructuring" position (discussed below) for dealing with the "C" block defaults. This flexible tool will help avoid forcing the defaulting debtor into fully-contested bankruptcy.

- The Commission Has Inherent Authority to Allow Restructuring of the Debt.

There exists clear authorization for the Commission, under appropriate circumstances, to approve a restructure plan in lieu of a re-auction. Several key authorities are as follows:

- Section 4(i) of the Communications Act authorizes the Commission to perform any acts necessary in the execution of its functions. These functions include meeting the key goals of the PCS auction.
- Section 309(j) of the Communications Act, while silent as to the treatment of auction debt defaults, directs the Commission to promote the rapid deployment of new services.
- Under Sections 1.3 and 24.819 of its Rules, the Commission on its own motion may waive the broadband PCS auction rules calling for re-auction of licenses of defaulted bidders where "the underlying purpose of the rule will not be served" and the grant of the waiver "is otherwise in the public interest".

As discussed below, we believe the elements justifying such a waiver may well exist in appropriate circumstances.

- Practical Suggestions for the Commission's "C" Block Restructuring Approach:

- Adopt a Clear Policy of Not "Rewarding" Defaulting Bidders.

Defaulters should not be rewarded. It is unfair to the public and unfair to the other bidders. It also encourages future speculation and more defaults.

More specifically, we recommend three rule changes (or clarifications):

- Cross-Default. A default on the debt on one license should be a default on all others owed by the defaulting party in the auction. Without this rule, the Commission will be allowing not only speculation during the auction, but cherry-picking after the auction. This appears to be only partially accomplished (with respect to down payments) under the FCC Position.
 - Defaulters Are Ineligible to Hold Licenses. A defaulting party should be disqualified from any future FCC auction and from holding FCC licenses of any kind in the future. This "black-ball" rule is applied in the context of federal oil and gas lease defaults and is very effective. An alternative way to do this would be to provide that a defaulting debtor will be considered presumptively unfit under the Commission's rules.
 - Defaulting Attributable Parties Also Should be Deemed Ineligible. This disqualification should apply to all parties with attributable interests (based on the spectrum cap attribution rules) in the defaulting "C" block bidder. Again, this appropriately penalizes speculating players and prevents speculators from simply retreating to find another designated entity in the future.

- The Commission Should Encourage Restructuring of the Debt under Certain Clear Circumstances.

When four key circumstances are present, the Commission should consider a restructuring (rather than trying to force a re-auction) of the debt:

- The restructuring party offers to take full control of the debtor.
 - The restructuring party is a fully qualified "small business" that, through its ownership composition, also serves the goal of wide dissemination and diversity of license ownership.

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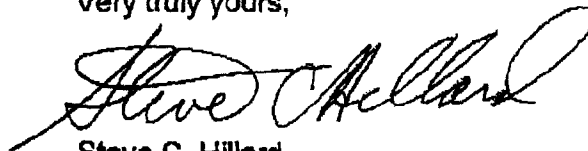
- The restructuring party can demonstrate, to commercial standards, financial capability to service the restructured debt and to satisfy the license build-out requirements.
- The defaulting debtor is not rewarded. (Such debtor may, however, be taken out by the restructuring party so as to avoid forcing the debtor into bankruptcy.)

• Conclusion.

We encourage development by the Commission of a flexible approach that, under appropriate and narrow circumstances, will allow defaulting debtors to be taken out by a restructuring party in a manner that avoids the problem of forced bankruptcy.

We appreciate the opportunity to provide these comments to you, and would be pleased to discuss them further at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steve Hillard", written in a cursive style.

Steve C. Hillard
Vice President